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PARTNERSHIP

UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

CATHERINE WELLS, CLARENCE  
WELLS, and JAMES WELLS,

Plaintiff,

vs.

GC SERVICES LIMITED  
PARTNERSHIP,

Defendants.

CASE NO. C06-03511 RMW HRL

**DEFENDANT GC SERVICES LIMITED  
PARTNERSHIP'S MOTION TO  
BIFURCATE PUNITIVE DAMAGES AT  
TRIAL**

Date: February 21, 2008  
Time: 2:00 P.M.  
Courtroom 2, 5<sup>th</sup> Floor

Trial Date: March 3, 2008

**TO PLAINTIFFS AND TO THEIR ATTORNEYS OF RECORD:**

**PLEASE TAKE NOTICE** that on February 21, 2008, at 2:00 P.M. in Courtroom 2 of the  
above-entitled Court located at 2112 United States Courthouse, 280 South First Street, San Jose,  
CA 95113, Defendant GC SERVICES LIMITED PARTNERSHIP (hereinafter, "GC Services")  
will move for an order to Bifurcate the Trial on the issue of punitive damages pursuant to *Federal*  
*Rules of Civil Procedure* Rule 42 and California *Civil Code* § 3295(d).

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MOTION TO BIFURCATE PUNITIVE DAMAGES AT TRIAL  
C06-3511 RMW HRL

1 This request is made on the grounds that a separate trial on the issue of punitive damages  
 2 will expedite and simplify the production of evidence and will promote the convenience of  
 3 witnesses. Moreover, a bifurcation of the trial will prevent the introduction of certain evidence  
 4 relating to the issue of damages which would otherwise unfairly prejudice GC Services. Finally,  
 5 separating the issue of liability will save this Court and the parties unnecessary trial time and  
 6 expense.

# 7 **I. INTRODUCTION**

8 Plaintiff CATHERINE WELLS incurred a debt with Citibank in the amount of \$10,550.88  
 9 ("the debt"). On July 26, 2005, Defendant GC Services, a collection agency, was retained to  
 10 collect the debt. Plaintiffs, Catherine, (her father) CLARENCE WELLS and (her brother) JAMES  
 11 WELLS, allege that GC Services violated 15 U.S.C. §1692, *et seq.* and California Civil Code  
 12 §1788, *et seq.* during its attempts to collect the debt from Catherine, by, among other allegations,  
 13 repeatedly contacting Plaintiffs and third parties from June 2005 to September 2005. Plaintiffs  
 14 also made claims for Intentional and Negligent Infliction of Emotional Distress, Invasion of  
 15 Privacy and Tort-In-Se. GC Services denies all of the Plaintiffs' allegations and claims.

16 Plaintiffs pray for punitive damages against GC Services on the third and fourth causes of  
 17 action for Intentional Infliction of Emotional Distress and Torts based upon allegations that  
 18 "Defendant acted with oppression, fraud, and/or malice . . ." (See ¶¶ 78 and 90 of the Complaint.)  
 19 Plaintiffs have also moved to compel pre-trial discovery on GC Services's financial condition and  
 20 net worth on the grounds that said discovery is relevant to the claim of punitive damages.  
 21 Defendant opposed Plaintiffs' Motion and moved for a Protective Order based upon California  
 22 Civil Code § 3295 which prohibits such pre-trial discovery until the court finds that a plaintiff has  
 23 established a "substantial probability" that the plaintiff will prevail on the claim.<sup>1</sup> See, California  
 24 Civil Code §3295(c).

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 28 <sup>1</sup>Plaintiffs' Motion to Compel Discovery and Defendant's Motion for Protective Order are  
 concurrently scheduled for hearing on February 5, 2008.

GC Services now seeks bifurcation of the issue of punitive damages, precluding the admission of evidence of GC Services' profits or financial condition until after the trier of fact returns a verdict for Plaintiffs and only after there is a finding that GC Services is guilty of malice, oppression, or fraud in accordance with California *Civil Code* § 3294. An order of bifurcation will insure that the jury is fair and will insure dispassionate consideration of the evidence in this case.

**II. JUSTICE WOULD BE PROMOTED BY ORDERING BIFURCATION SINCE THE ISSUE OF PUNITIVE DAMAGES IS POTENTIALLY PREJUDICIAL TO DEFENDANT.**

Rule 42 of the *Federal Rules of Civil Procedure* provides as follows:

(b) SEPARATE TRIALS. The court, in furtherance of convenience or to avoid prejudice, or when separate trials will be conducive to expedition and economy, may order a separate trial of any claim, cross-claim, counterclaim, or third-party claim, or of any separate issue or of any number of claims, cross-claims, counterclaims, third-party claims, or issues, always preserving inviolate the right of trial by jury as declared by the Seventh Amendment to the Constitution or as given by a statute of the United States.

Rule 42 empowers the Court to order the trial of particular issues before others. This power includes the broad discretion to order the separate trials on the issue of liability before the issue of punitive damages. A district court also may order separate trials under Rule 42(b) to promote judicial economy and efficiency. *See Jinro America, Inc. v. Secure Investments, Inc.*, 266 F.3d 993, 998 (9th Cir. 2001).

Here, there is no question that the presentation of evidence concerning punitive damages will be lengthy and protracted. It will involve the admission and presentation of evidence that has nothing to do with the issues of liability or general damages in this case. Plaintiffs may call expert witnesses and present financial documents to the jury regarding GC Services' profits or financial condition. There presently has been no pre-trial discovery into GC Services' profits and financial condition in this case. GC Services objected to Plaintiffs' pre-trial discovery into its net work and financial condition on the grounds that such discovery is irrelevant, premature and is meant to

1 harass and annoy GC Services. GC Services further moved for a protective order regarding same.

2 This is exactly the type of evidence and testimony which could be highly prejudicial to a  
3 corporate defendant like GC Services. Therefore, GC Services requests that the Court order that  
4 the issue of punitive damages be tried separately to the same jury only if the jury has first found  
5 that GC Services is liable on either Plaintiffs' third or fourth causes of action.

6 **III. EVIDENCE OF GC SERVICES' FINANCIAL CONDITION SHOULD NOT BE**  
7 **OFFERED BEFORE THE JURY UNTIL THERE HAS BEEN A FINDING THAT**  
8 **PLAINTIFFS ARE ENTITLED TO EXEMPLARY DAMAGES.**

9 California *Civil Code* § 3295(d) provides that:

10 "The court shall, on application of any defendant, preclude the  
11 admission of evidence of that defendant's profits or financial  
12 condition until after the trier of fact returns a verdict for plaintiff  
13 awarding actual damages and finds that a defendant is guilty of  
14 malice, oppression, or fraud in accordance with § 3294. Evidence of  
15 profit and financial condition shall be admissible only as to the  
16 defendant or defendants found to be liable to the plaintiff and to be  
17 guilty of malice, oppression or fraud. Evidence of profit and  
18 financial condition shall be presented to the same trier of fact that  
19 found for the plaintiff and found one or more defendants guilty of  
20 malice, oppression, or fraud."

21 In the Complaint, Plaintiffs pray for "... punitive damages pursuant to 15 U.S.C. § 1692k and  
22 California Civil Code § 1788.17." (See Complaint, pg. 13.) Under Plaintiffs' third and fourth  
23 causes of action for Intentional Infliction of Emotional Distress and Torts, the Complaint alleges  
24 that "Defendant acted with oppression, fraud, and/or malice, thereby entitling Plaintiffs to punitive  
25 damages in an amount according to proof and a finder of fact at trial." (See ¶¶ 78 and 90 of the  
26 Complaint.) As such, Plaintiffs claim that they are entitled to recovery of punitive damages based  
27 upon California *Civil Code* § 3294.

1 Section 3294 states in relevant part:

2 (a) In an action for the breach of an obligation not arising from contract, where it is  
3 proven by clear and convincing evidence that the Defendant has been guilty of  
4 oppression, fraud, or malice, the Plaintiff, in addition to actual damages, may  
5 recover damages for the sake of example and by way of punishing the Defendant.

6 Since Plaintiffs are seeking recovery of punitive damages against GC Services based §  
7 3294, then Plaintiff must accordingly be required to comply with *Civil Code* § 3295. Section 3295  
8 allows protective orders requiring the plaintiff to produce evidence of a prima facie case of liability  
9 for damages pursuant to Section 3294 prior to the introduction of evidence of a defendant's profits  
10 and financial condition. California *Civil Code* § 3295(a). Moreover, Section 3295 prohibits pre-  
11 trial discovery by plaintiff regarding evidence of GC Services' financial condition and profits  
12 unless plaintiff has established that there is a "substantial probability" that the plaintiff will prevail  
13 on a claim entitling him or her to damages under Section 3294. California *Civil Code* § 3295(c).  
14 There has been no such finding in the case at bar. Therefore, the Court should order bifurcation  
15 trial on the issue of punitive damages.

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MOTION TO BIFURCATE PUNITIVE DAMAGES AT TRIAL

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1 **IV. CONCLUSION**

2 Based on the foregoing, GC Services respectfully submits that the convenience of  
3 witnesses, the convenience of the Court, and the parties and the interests of justice will be served if  
4 this Court orders bifurcation of determination of the amount of punitive damages tried separately  
5 from the issue of liability and general damages. Defendant GC Services would be prejudiced by  
6 admission of evidence regarding any profits or financial condition until after the trier of fact returns  
7 a verdict for Plaintiff awarding actual damages, and finds that the Defendant is first liable for  
8 malice, oppression, or fraud in accordance with California *Civil Code* § 3294.

9  
10 DATED: February 5, 2008

CARLSON & MESSER LLP

11  
12 By 

Charles R. Messer, Esq.

J. Grace Felipe, Esq.

W. Michael Hartman

Attorneys for Defendant, GC SERVICES  
LIMITED PARTNERSHIP



STATE OF CALIFORNIA                       )  
COUNTY OF LOS ANGELES              )     ss.

I am over the age of eighteen years and not a party to the within action. my business address is 5959 W. Century Boulevard, Suite 1214, Los Angeles, California 90045. I am employed at that address at the firm of Carlson & Messer, LLP.

**SEE ATTACHED SERVICE LIST**

[ ] **BY FACSIMILE:** On the date set forth below, at approximately \_\_\_\_\_ p.m., I transmitted the above document(s) from facsimile machine number (310)242-2222, in compliance with transmission as provided in California Rule of Court 2008. The fax number(s) that I used are shown above or on the attached Service List, along with the names of recipients and the interested parties. The Facsimile Machine I used complied with California Rule of Court 2003(3). The transmission was reported as complete and without error by the machine, which properly issued the transmission report.

Executed this **5<sup>th</sup> day of February, 2008**, at Los Angeles, California.

  
Deborah A. Nash

Case Name

*Catherine Wells, et al v. GC Services Limited Partnership*

**Our File No. 05517.00**

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